

✓ 176

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
FILED

SEP 15 1998

Michael N. Minby
Clerk of Court

EDWARD ALCALA, et.al.,
Plaintiffs,

v.

ALEX PEREZ, in his official capacity
as Sheriff of Cameron County, Texas,
and CAMERON COUNTY, TEXAS,
Defendant.

CIVIL ACTION NUMBER B-96-203

JURY DEMAND

MOTION TO DISMISS AS TO CERTAIN PLAINTIFFS

Defendant moves to dismiss the claims of the Plaintiffs on the attached list for failure to respond to interrogatories.

1. There are three purposes of sanctions: (1) to secure compliance with the discovery rules; (2) to deter violations of discovery rules by orders; and (c) to punish parties for discovery violations. *National Hockey League v. Metropolitan Hockey Club, Inc.* 427 U.S. 639, 643, 96 S.Ct. 2778, 2771, ____ L.Ed.2d ____ (1976).
2. Dismissal for failure to respond to interrogatories is the appropriate remedy in this case. FRCP, Rule 37(b)(2); and, *see, O'Neill v. AGWI Lines*, 74 F.3d 93, 95 (5th Cir. 1996).
3. On or about June 26, 1998, A List Of Plaintiffs as of 06/26/98 was filed. It contains 277 named Plaintiffs. This added 67 named Plaintiffs to the Original Complaint filed November 8, 1996.
4. Seventeen interrogatories and eleven requests for production for each original Plaintiff were sent to Plaintiffs' Attorneys so the each Plaintiff's claim could be evaluated. They were mailed certified, with a return receipt requested. They were signed for on January 29, 1997.

3. Plaintiffs' Counsel requested and was given an additional forty-five days to respond. Such extension was confirmed in writing. The responses or objections were due April 13, 1997.

4. No responses were received by the filing of Defendant's Motion to Compel, which was filed on May 27th, 1998.

5. No objection to the interrogatories or to the production requests were timely made. Objections were waived. FRCP, Rule 33(b)(4).

6. By Order signed July 2, 1998, after hearing on June 30, 1998, the Court granted Defendant's Rule 37(a)(2)(B) Motion to Compel and ordered Plaintiffs to respond by August 30, 1998.

7. On July 2nd, 1998, Defendant mailed the same interrogatories and request for discovery to the Plaintiffs that were added by Plaintiff's counsel on or about June 26, 1998.

8. Defendant's counsel verbally agreed to give Plaintiff's until close of business on Friday September 4th, 1998, in which to file responses.

9. On Friday Plaintiff's counsel stated that they had prepared and in hand several more responses on behalf of some of the named Plaintiffs. It was agreed that a list of names would be faxed limited to those Plaintiffs for which the Responses were in hand, except for one Plaintiff who, because of events, could not provide responses at that time. It was also agreed that Responses for the Plaintiffs listed would be placed in the mail that day on Friday the Fourth.

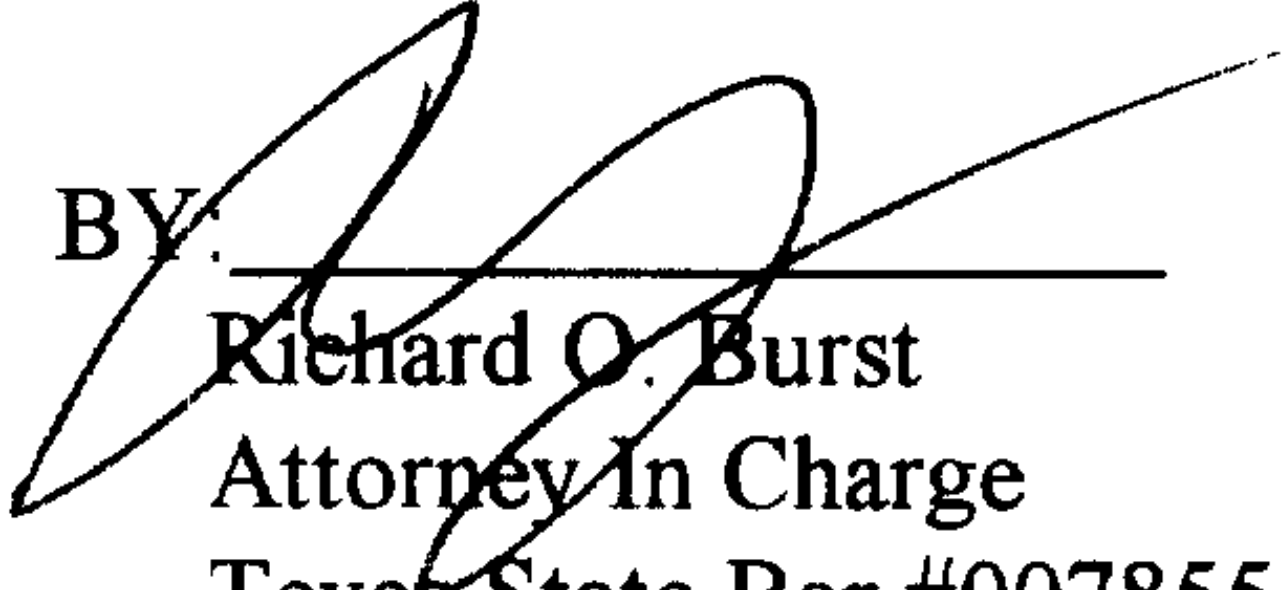
10. At this time the Plaintiffs on the attached list (except those that were later added as Plaintiffs) have had one year and seven months to respond to Defendant's First Seventeen Interrogatories and Eleven Motions to Produce. And after being ordered by the Court pursuant to Rule 37(a)(2)(B) to respond have failed to timely file their response. Those Plaintiffs that were added by Plaintiff's counsel on or about June 26, 1998, had at least Fifty-Four days to respond to

the same seventeen interrogatories and eleven request for production and those on the attached list have not.

WHEREFORE, Defendant asks the Court to dismiss the causes of the Plaintiffs on the attached list for failure to file responses to Defendant's interrogatories and requests for production.

Respectfully,

For Cameron County
Cameron County Civil Legal Department
964 East Harrison Street
Brownsville, Texas 78578
(956) 550 1345
(956) 550 1348 (Facsimile)

BY: 
Richard O. Burst
Attorney In Charge
Texas State Bar #00785586
S.D. No. 15515

Dylbia L. Jefferies
Of Counsel
Texas State Bar #00786516
S.D. No. 17065

CERTIFICATE OF SERVICE

I, Richard O. Burst do hereby certify that a true and correct copy of the foregoing Motion has been mailed to Plaintiff's Attorney, James R. Herrmann, P.O. Box 2541, Harlingen, Texas 78550-2541 on this 15th of September, 1998.


Richard O. Burst

LIST

- 1 Aranda Jr., Juan Manuel
- 2 Barbarena, Mike M.
- 3 Barbosa, Armando
- 4 Beauford, Cleo L.
- 5 Cantu, Amado
- 6 Canul, Joseph J.
- 7 Canul, Juan Jose
- 8 Cardenas, Luciano
- 9 Cardenas, Miguel
- 10 Casanova, Ignacio
- 11 Castorena, Jorge
- 12 Cavazos, Johnny
- 13 Claire, Marco A.
- 14 Cortinas, Lucio M.
- 15 Cruz, George
- 16 Culver, Marian
- 17 De Los Santos, Robert
- 18 Diaz, Cesar R.
- 19 Diaz Jr., Domingo
- 20 Domanski, Robert
- 21 Esparza, Nora
- 22 Flores, Alejandro
- 23 Flores, Juan J.
- 24 Garcia, Alex
- 25 Garcia, San Juana Perez
- 26 Garza, Eusebio
- 27 Garza, Sophie Ann
- 28 Gilbert, John A.
- 29 Gomez, Santos
- 30 Gonzalez III, Thomas
- 31 Guajardo, Joe
- 32 Guerrero, Frank
- 33 Herrera III, Juan
- 4 Hinojosa III, Manuel
- 5 Huerta, Daniel

LIST

36 Ibarra, Dolores Benavides
37 Longoria Jr., Jose
38 Lozano III, Guillermo M.
39 Martin, German
40 Martinez, Nat
41 Medina, Jesus N.
42 Medrano Jr., Rolando
43 Montemayor, Samuel
44 Montes, Jose A.
45 Munivez, Jaime
46 Nunez, Samuel
47 Paz, Joe
48 Pena, Rosendo
49 Perez Jr., Raul
50 Perez, Ricardo David
51 Raya, Ramiro
52 Reed, Andy
53 Rodriguez, Juan Luis
54 Rodriguez, Raul E.
55 Rodriguez Jr., Robert
56 Ruiz, Jose Roberto
57 Salas, Belinda
58 Salazar, Gilbert
59 Santillana, Sylvia Ann
60 Shuete, Luis Humberto
61 Trejo, Michael E.
62 Trevino, Edmundo
63 Trevino, Federico
64 Valle, Dolores Y.
65 Vidal, Maria G.
66 Ybarra, Elias
67 Zamora, Horacio A.
68 Zepeda, Eduardo
69 Zepeda, Gilberto